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OFFICE OF PETITIONS

In re Application of :
Carrell W. Ewing, et al. :
Application No. 10/806,130 : DECISION ON PETITION
Filed: March 23, 2004 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 40026XY :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed July 1, 2005, and supplement thereto filed August 3, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the substitute amendment filed December 19, 2006.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

It is noted that a substitute amendment was filed on December 19, 2006, since the amendment filed July 1, 2005 improperly incorporates by reference the prior application. Accordingly, all of the above requirements have been satisfied. The late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

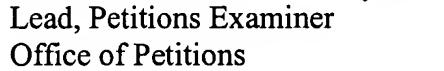
A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

Although a decision on the petition under 37 CFR 1.78(a)(3) had not yet been decided, it is noted that the Examiner has already considered the claim for benefit of the priority, as noted by his initial on the BIB sheet for this application. Therefore, as no further action is seen to be required in this matter, this application will proceed to issue on January 9, 2007.

Telephone inquires related to this decision should be directed to Sherry D. Brinkley at (571) 272-3204. Telephone inquiries related to processing at Publishing Division should be directed to (571) 272-4200.



Sherry D. Brinkley
Petitions Examiner
Office of Petitions



Frances M. Hicks
Lead, Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt